

**REMARKS**

Currently pending claims 9-51 are for consideration by the Examiner.

The Examiner rejected claims 9-51 under 35 U.S.C. 102(b) as anticipated by David (WO 98/09290 or, in the alternative, under 35 U.S.C. 103(a) as obvious over David (WO 98/09290).

Applicant respectfully traverses the §102 and §102 rejections with the following arguments:

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**35 U.S.C. §102(b) and §103(a)**

The Examiner rejected claims 9-51 under 35 U.S.C. 102(b) as anticipated by David (WO 98/09290 or, in the alternative, under 35 U.S.C. 103(a) as obvious over David (WO 98/09290). Applicants respectfully contend that claims 9-51 are not anticipated by David (WO 98/09290) and are not obvious over David (WO 98/09290), based on the following arguments.

Applicant respectfully contends that independent claims 9, 27, and 40 are not anticipated by David and not obvious over David, because David does not teach or suggest each and every feature of independent claims 9, 27, and 40. For example, David does not teach or suggest the feature: "wherein the variable control data comprises at least one conditional instruction, wherein each instruction of the at least one the conditional instruction includes an operation code and operands, wherein the operation code includes an operation portion denoting an operation and a condition portion denoting a condition, wherein the operation is to be executed if the condition is TRUE, wherein the operation is not to be executed if the condition is FALSE, and wherein the operation is adapted to be performed in conjunction with at least one of said operands".

An examination of David's mechanism for storing and executing instructions will shed light as to why David does not teach or suggest the preceding feature of claims 9, 27, and 40. David's executable instructions are contained in various types of lists as illustrated in FIGS. 5-10 and described on page 8, line 26 - page 10, line 34. David's Conditional Lists of FIG. 6, as described on page 9, lines 12-18, relate to the preceding feature of claims 9, 27, and 40 as follows. The conditional instruction syntax shown in FIG. 6 includes "operands" having up to 24 bits which represent "a condition portion denoting a condition" required by claims 9, 27, and 40. However, the conditional instruction syntax shown in FIG. 6 does not include "an operation

portion denoting an operation" to be performed in dependence on whether operation to be executed or FALSE, as required by claims 9, 27, and 40. In David's scheme, the operation to be executed is not contained within the conditional instruction shown in FIG. 6, but is instead present in another instruction in another list. In the conditional instruction shown in FIG. 6, the operation to be executed is in another list to execute identified by "true\_list\_offset" if the operation is TRUE and identified by "false\_list\_offset" if the operation is FALSE. Thus, claims 9, 27, and 40 are not anticipated by David under 35 U.S.C. §102(b), because David does not teach what claims 9, 27, and 40 require. Likewise, claims 9, 27, and 40 are not obvious over David under 35 U.S.C. §103(a), because to incorporate "an operation portion denoting an operation" into the conditional instruction in the Conditional List of FIG. 6 would negate and destroy David's data structure, namely David's list scheme, which underlies David's mechanism for storing and executing instructions. In other words, incorporation of "an operation portion denoting an operation" into the conditional instruction in the Conditional List of FIG. 6 is inconsistent with David's data structure and would effectively destroy David's invention.

Applicant further notes that the Examiner has not presented sufficient analysis to show support how David teaches or suggests the preceding feature of claims 9, 27, and 40; e.g., with respect to "a condition portion denoting a condition" as explained *supra*. Moreover, the Examiner has not presented arguments to support what he alleges is known with the teaching of David. The absence of said argumentation by the Examiner makes the rejection of claims 9, 27, and 40 *per se* defective. Moreover, the Examiner has totally ignored most of the dependent claims and has not presented any argument whatsoever that David teaches or suggests the specific features recited in the dependent claims. On page 5, lines 3-4 of the office action mailed

March 11, 2003, the Examiner "incorporates all reasoning and interpretation made previous to this action ..." and has apparently reverted to his arguments in the preceding office action mailed September 24, 2002 where the prevailing claims were claims 1-3 and 5-8. However, claims 1-3 and 5-8 were canceled and new claims 9-51 were added. New claims 9-51 include substantial subject matter not included in the canceled claims 1-3 and 5-8, and the Examiner has not addressed the subject matter of claims 9-51 not included in the canceled claims 1-3 and 5-8. For example, claim 19 claims a conditional arithmetic instruction. However, claim 19 depends from claim 17 which includes the use of arrays and pointers to the arrays, which David does not teach or suggest. The Examiner has not even addressed the use of arrays and pointers to the arrays in conditional arithmetic statements as required by claim 19. In fact claims 17-24, 30-39, and 42-51 are directed to various aspects of arrays and the associated pointers, which the Examiner has not addressed. Accordingly, Applicant hereby respectfully requests a serious examination of claims 9-51.

Applicant now comments on the following statement made by the Examiner beginning on the last paragraph of page 6 of the office action mailed March 11, 2003: "The examiner had requested a response from applicant in the argument section of the last action pages 5-6, requesting applicant to **prove** that conditional as well as arithmetic data structures cannot be used together and to support applicant conclusion that David does not suggest the combination of programming data structures [argument incorporated herein]. It is noted, applicant has not requested anything evidence associated with what the examiner known to be well known under the 103 part of last action, based on the "OFFICIAL NOTICE TAKEN", required to be requested upon next action by applicant, therefore will not be provided, herein or hereafter, due to the

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seasoned challenge, not being met ... the primary examiner respectfully **requires** applicant to IDENTIFY and provide the prior art programming language or even languages, intended or to be used [base on Fig. 5], having the well known TRUE/FALSE, conditional statements, such as, "If then else", as applicant is not considered to be the creator of a new programming language, but is using available programming languages providing these data structures, considered to be well known data structures, as the examiner is aware " (emphasis added). In response, Applicant respectfully contends that it is the Examiner, and not Applicant, who has the burden of proof. The Examiner is required to prove that David teaches or suggests a conditional arithmetic statement, as well as every other feature of every claim, which the Examiner has not done. For example, the Examiner has not provided any reason whatsoever for combining with David what the Examiner alleges to be generally known. Thus, the Examiner has not satisfied his burden of proof and has failed to establish *prima facie* obviousness. The Examiner cannot legitimately require Applicant to prove that David does not teach a conditional arithmetic statement, and the Examiner cannot legitimately require Applicant to identify anything concerning prior art programming languages. Applicant is not required to prove that David does not teach a conditional arithmetic statement. Applicant is free to formulate Applicant's arguments as Applicant sees fit and is not required to formulate arguments as the Examiner dictates. Applicant respectfully maintains that the preceding statement by the Examiner is an attempt to improperly shift the burden of proof to Applicant.

Based on the preceding arguments, Applicant respectfully maintains that independent claims 9, 27, and 40 are not anticipated by David and not obvious over David, and that independent claims 9, 27, and 40 are in condition for allowance. Since claims 10-26, 28-39, and

41-51 respectively depend from claims 9, 27, and 40, Applicant respectfully contends that claims 10-26, 28-39, and 41-51 are likewise in condition for allowance.

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**CONCLUSION**

Based on the preceding arguments and amendments, Applicant respectfully believes that claims 9-51 and the entire application meet the acceptance criteria for allowance and therefore request favorable action. Should the Examiner believe anything further would be useful in resolving any outstanding issues, he is invited to contact Applicant's representative at the telephone number listed below.

Date: 05/08/2003

Respectfully submitted,

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